

REMARKS

The claims have been amended to better define the scope of the invention and in the furtherance of the prosecution of this case.

Before considering the rejections in detail, the fundamental concepts of the present invention will be briefly reviewed. The present invention relates to a cubic liquid crystalline phase precursor comprising an amphiphile (A) capable of forming a cubic liquid crystalline phase, an optional solvent (B), and an additive (C) selected from the group consisting of an ionic anchor, a tether, and combinations thereof and wherein (A), (B), and (C) are present in mass fractions relative to each other such that $1.0 = a + b + c$, wherein a is the mass fraction of (A), b is the mass fraction of (B), and c is the mass fraction of (C). The precursor can optionally comprise a cosmetic or pharmaceutical ingredient. The claimed invention delivers these actives topically. The claimed compositions are not for ingestion.

The amphiphile can be a single amphiphile or a combination of two or more amphiphiles capable of forming a cubic liquid crystalline phase, preferably in the presence of a solvent and an additive. The solvent can be a single solvent or a combination of two or more polar or non-polar solvents and may contain other ingredients such as buffers and/or stabilizers. Generally the additive is an anchor, a tether and/or combination thereof, having a low Krafft temperature, preferably below about 25°C to prevent crystallization. It is preferred that the anchors be selected from positively and negatively charged surfactants. Tethers are preferably selected from derivatized polysaccharides and linear substituted polymers.

Objections to the IDS, Specification and Claims

The Examiner noted that the publications of Hyde and McCutcheon were not received with the IDS and therefore were not considered. As stated in the earlier response, since these references are lengthy texts, the Applicants have provided the Table of Contents for each of these two references. The Applicants do not want merely the Table of Contents to be considered for this IDS, but rather the entire text. However, since these texts are very lengthy, the Applicants have elected to not photocopy the 1000+ pages of each, but rather to supply the TOC as representative of the areas covered in each text. However, if there is a particular chapter or pages that the Examiner would want for a particular area of review, the Applicants will supply those pages to the Examiner at the Examiner's request. If the Examiner would prefer the entire contents of these two texts for review, please notify the Applicants and these entire texts will be provided to the Examiner.

The specification was objected to for a second time regarding the notation and limits of "b". On page 4, line 28 of the specification, reference to the lower range of "b" was absent, however, there is a space where the limit range should be. As such, the specification should read " $1.0 > a > 0, 1.0 > b > 0, 1.0 > c > 0 \dots$ ", where ">" has been added to define the lower limit of b as being greater than zero. Antecedent basis for this amendment may be found on page 16, line 2. The underlines which appeared in the first response did NOT represent a "less than or equal to" sign but rather were underlined to show the addition of the new notation.

Claim 1 has been amended to reflect the limitations of the polar solvent ("b") as defined in the specification.

Double Patenting Rejection

The Examiner has rejected claims 1-2 and 4-18 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 9-12 and 15-19 of USP 6,656,385.

Claim 16 has been rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of USP 6,773,627.

Upon indication of allowable subject matter in this case, Applicants will file the appropriate terminal disclaimers in order to overcome these rejections.

Rejections Under 35 U.S.C. §102(e)

The Examiner has repeated her previous rejections under Akashe et al. Anderson (USP 6,482,517) and Engström et al. (USP 5,371,109).

In view of the amendments made herein to the claims, in particular claims 1, 14, 16, 21, 28, 36, 41, 51, 58, 66, 68, 70 and 72, and as per the January 18th, 2005 telephone conversation with the Examiner, these rejections have been overcome and should be withdrawn.



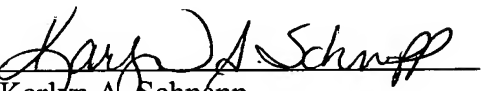
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Accordingly, the present application as amended herein, is now in form for allowance and early reconsideration and allowance of the claims, as currently pending, is earnestly solicited.

Respectfully submitted,


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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as ~~FIRST CLASS~~ mail in an envelope addressed to The Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 1stth day of March, 2005.



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